

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
STATE OF IOWA	)	FCC File No. 0006295265
	)	
Request for Waiver of Section 90.529 of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: October 8, 2014**

**Released: October 8, 2014**

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. In this Order, we grant the State of Iowa a temporary and conditional waiver of the five-year interim “substantial service” deadline (*i.e.* June 13, 2014), set forth in section 90.529(b)(1) of the Commission’s rules, that applies to licensees on state channels in the public safety narrowband segment of the 700 MHz band.<sup>1</sup> We extend the interim “substantial service” deadline applicable to Iowa’s 700 MHz state license until June 13, 2015.

**II. BACKGROUND**

2. *State License and Substantial Service.* In 1998, the Commission established the initial band plan and service rules for the 24 megahertz of public safety spectrum in the 700 MHz band that was reallocated from television broadcast use as a result of implementation of the DTV transition.<sup>2</sup> In 2000, the Commission, among other things, designated ninety-six 12.5 kHz bandwidth channel pairs from the 700 MHz narrowband spectrum for statewide geographic licensing.<sup>3</sup> To ensure efficient use of the spectrum, the Commission established a five-year interim benchmark and a ten-year final benchmark for

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<sup>1</sup> See 47 C.F.R. § 90.529(b)(1). Section 90.529(b)(1) of the Commission’s rules requires State licensees to certify that they are providing or are prepared to provide “substantial service” to one-third of their population or territory by June 13, 2014. “Substantial service” is defined as the construction and operation of facilities on state channels which is “sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.” A State licensee is deemed “prepared” to provide substantial service if it certifies that a radio system has been approved and funded by the deadline date. State licensees that do not meet the interim substantial service benchmark, *e.g.*, because they have failed to construct or receive funding for any facilities by the June 13, 2014 deadline, will be subject to license cancellation or modification, and recovered State license spectrum will revert to General Use subject to regional planning.

<sup>2</sup> See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 (1998).

<sup>3</sup> See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19864 ¶ 48 (2000) (*Third MO&O and Third R&O*).

state licensees to provide specified levels of “substantial service” within their statewide license areas.<sup>4</sup>

3. In determining the timing of the “substantial service” benchmarks, the Commission noted that the continued presence of incumbent TV broadcasters in the 700 MHz band could limit state licensees’ ability to deploy systems on statewide narrowband channels.<sup>5</sup> Accordingly, the Commission determined that the five- and ten-year benchmarks would be calculated from the date that incumbent broadcasters were required to vacate the 700 MHz band. After the Commission adopted the “substantial service” requirements for statewide narrowband licensees, however, the deadline for completing the DTV transition was twice extended, and ultimately the transition was completed on June 12, 2009.<sup>6</sup>

4. On July 27, 2011, the Commission clarified that the five-year interim benchmark date would fall on June 13, 2014, five years after the June 12, 2009, final DTV transition date.<sup>7</sup> On April 7, 2014, the Public Safety and Homeland Security Bureau (Bureau) issued a *Public Notice* providing state licensees guidance on demonstrating compliance with the June 13, 2014 interim benchmark showing.<sup>8</sup>

5. *Iowa Waiver Request.* On June 6, 2014, Iowa requested a waiver of Section 90.529(b)(1) of the Commission’s rules relative to the five-year interim benchmark deadline applicable to call sign WPTZ782.<sup>9</sup> Iowa states that it is actively pursuing a statewide 700 MHz Project 25 Phase II land mobile radio system.<sup>10</sup> Iowa recites that “[t]he proposed system will provide radio service to Department of Public Safety, Department of Transportation, Department of Natural Resources and the Department of Corrections and other interested public safety organizations.”<sup>11</sup> Iowa’s “timeline to get this system started has been delayed.”<sup>12</sup> With its waiver request, Iowa provided “a timeline of events that have occurred causing the delay of constructing the new system[,]” including refinements to the Request for Proposals (RFP).<sup>13</sup> Iowa reports that it is now awaiting a final decision on awarding a contract under its current RFP.<sup>14</sup> Iowa adds that it intends to ask the state legislature to fund the system once it returns to session in January 2015.<sup>15</sup> Iowa expects a funding decision during the 2015 legislative session.<sup>16</sup> Therefore, Iowa

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<sup>4</sup> *Id.* at 19871 ¶ 62.

<sup>5</sup> *Id.* at ¶ 61.

<sup>6</sup> In 2006, Congress established a “hard” DTV transition date of February 17, 2009. *See* Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006). In 2009, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009. *See* DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009).

<sup>7</sup> *See* Service Rules Governing Public Safety Narrowband Operations in the 769-775/799-805 MHz Bands, WT Docket 96-86, *Declaratory Ruling*, 26 FCC Rcd 10895 (2011); *Order*, 27 FCC Rcd 15010 (PSHSB 2012) (conforming section 90.529(b) of the FCC’s rules regarding the “substantial service” deadlines for state-licensed 700 MHz public safety narrowband channels to comport with the deadlines specified in the Commission’s Declaratory Ruling).

<sup>8</sup> Public Safety and Homeland Security Bureau Provides Guidance to 700 MHz Narrowband State Licensees Regarding Interim Substantial Service Benchmark Showing Due on June 13, 2014, *Public Notice*, 29 FCC Rcd 3706 (PSHSB 2014).

<sup>9</sup> *See* Letter from Thomas T. Lampe, Iowa Department of Public Safety to FCC (dated June 2, 2014) (Waiver Request), and Substantial Service Build Out Waiver Request (Supplemental Waiver Request) attached to FCC File No. 0006295265 (filed June 6, 2014).

<sup>10</sup> Waiver Request at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2 (RFP1013005265 *re* Statewide 700 MHz P25 LMR Network Infrastructure and Subscriber Units).

<sup>15</sup> *Id.*

requests a one year extension of the interim benchmark until June 13, 2015.<sup>17</sup>

### III. DISCUSSION

6. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>18</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>19</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>20</sup> Based on the record before us, we find that Iowa has justified a temporary waiver.

7. Grant of the requested waiver will not frustrate the underlying purpose of Section 90.529(b)(1), which is to ensure efficient use of the spectrum, including the provision of service to rural, remote, and insular areas.<sup>21</sup> The Commission recognized that "setting our initial construction/operation benchmark at five years is consistent with our experience and Rules for public safety/government entities."<sup>22</sup> Section 90.629(b) affords public safety licensees a five year extended implementation period ("slow growth") to construct and place into operation facilities that require a multi-year planning and funding cycle.<sup>23</sup> On occasion, the Commission has waived Section 90.629 and extended the five year slow growth period for public safety and governmental entities that demonstrate a commitment to constructing facilities despite experiencing delays stemming from the procurement process.<sup>24</sup>

8. Here, Iowa intends to build out its 700 MHz Project 25, Phase II system in three phases to provide coverage to the state, including rural areas.<sup>25</sup> Iowa estimates providing service (1) to one third of the population by December 31, 2016 and (2) to two-thirds of the population by December 31, 2017.<sup>26</sup> Iowa states that vendors responded to the RFP and that it intends to award a contract by September 15, 2014.<sup>27</sup> The contract for the system, however, would be contingent on Iowa obtaining funding from the state legislature<sup>28</sup> which is not in session until January, 2015. Given Iowa's efforts to realize its intention to make use of the state license, it would be premature to cancel Iowa's state license at this time. A one

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>19</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>20</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>21</sup> *Third MO&O and Third R&O*, 15 FCC Rcd at 19871 ¶ 62.

<sup>22</sup> *Id.* 19872 ¶ 62 citing 47 C.F.R. §§ 90.155(b) and 90.629(b).

<sup>23</sup> 47 C.F.R. § 90.629(b) ("[w]here an applicant is required by law to follow a multi-year cycle for planning, approval, funding and purchasing a proposed system, the applicant must indicate whether funding has been obtained and if not, when such funding approval is expected.")

<sup>24</sup> *Cf., e.g., County of Los Angeles, California, Letter*, 26 FCC Rcd. 14286 (PSHSB 2011); *Letter*, 27 FCC Rcd 12120 (PSHSB 2012).

<sup>25</sup> Supplemental Waiver Request at 1.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.*

<sup>28</sup> Waiver Request at 2.

year extension would serve the public interest because it would afford Iowa a reasonable opportunity to obtain funding for the system. Therefore, we grant Iowa a one year extension of the interim “substantial service” benchmark deadline until June 13, 2015 to make its interim “substantial service” showing, conditioned on the following: (1) Iowa shall report to the Bureau on November 8, 2014 whether it has awarded a contract for its proposed system, and, if not, why not and when it expects to do so, and (2) Iowa shall report to the Bureau at such time as the state legislature grants or denies funding for the proposed system.

#### **IV. ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, that the waiver request filed by the State of Iowa IS GRANTED WITH CONDITIONS.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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